

House Bill 469

By: Representatives Setzler of the 35<sup>th</sup> and Chambers of the 81<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to education, so as to enact the "Public Charter Schools Act"; to provide for legislative findings; to revise provisions relating to the quality basic education formula with regard to public charter schools; to revise and add definitions relating to charter schools; to provide for requirements relating to public charter schools; to authorize the establishment of public charter schools by public charter school authorizers and to provide for related requirements; to provide for intervention by the State Board of Education; to provide that public charter schools will be eligible for waivers of certain provisions of law; to provide for the amendment and terms of charters for public charter schools; to provide for termination of a charter for a public charter school under certain conditions; to provide for funding for public charter schools; to change certain provisions relating to facilities funds; to change certain provisions relative to the Office of Charter School Compliance; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

This Act shall be known and may be cited as the "Public Charter Schools Act."

**SECTION 2.**

The General Assembly finds that the education of the children of this state is of the utmost importance to their individual well-being as well as to the future of this state. The General Assembly finds and declares that parents should have control over the education of their children and that the State of Georgia should give all parents equal opportunities to choose the education best suited to their child. The General Assembly finds and declares that establishing and authorizing innovative schools, including public schools that can partner with colleges and universities under the supervision and authority of the Board of Regents of the University System of Georgia, to provide educational, vocational, and career options

for students and competition for students is in the best interests of this state. Further, it is found that entities other than the local boards of education should be allowed to authorize public charter schools to establish competition and to encourage innovative methods of education.

### SECTION 3.

Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to education, is amended in Code Section 20-2-161, relating to the Quality Basic Education Formula, by adding a new subsection to read as follows:

"(e.1) The total charter funding calculated in subsection (h) of Code Section 20-2-2068.1 for public charter schools authorized by a public charter school authorizer shall be deducted from the allotment of the appropriate school system prior to disbursing the total allotment to such school system. The department shall disburse funding to the public charter school authorizer on behalf of a public charter school, as provided for in subsection (h) of Code Section 20-2-2068.1."

### SECTION 4.

Said chapter is further amended in Code Section 20-2-2062, relating to definitions, by revising paragraph (1) and by inserting new paragraphs (11.1) and (11.2) as follows:

"(1) 'Charter' means a performance based contract between a local board and a charter petitioner, the terms of which are approved by the local board and by the state board in the case of a local charter school, ~~or~~ between the state board and a charter petitioner, the terms of which are approved by the state board in the case of a state chartered special school, or between a public charter school authorizer and a charter petitioner, the terms of which are approved by the public charter school authorizer and the state board."

"(11.1) 'Public charter school' means a charter school that is operating under the terms of a charter between the charter petitioner and a public charter school authorizer.

(11.2) 'Public charter school authorizer' means:

(A) The elected governing authority of a county or municipality;

(B) The board of trustees of an institution of the University System of Georgia; or

(C) The State Board of Education

which authorizes a charter school pursuant to Code Section 20-2-2063.1."

### SECTION 5.

Said chapter is further amended in Code Section 20-2-2063, relating to minimum requirements for charter petitions, by adding a new subsection to the end of such Code section as follows:

"(d) The State Board of Education shall establish rules, regulations, policies, and procedures relating to charter petitions to establish public charter schools and provide for the submission of such petitions from a charter petitioner to a public charter school authorizer."

## SECTION 6.

Said chapter is further amended by adding a new Code section as follows:

"20-2-2063.1.

(a)(1) Public charter school authorizers shall be authorized to approve public charter schools and to enter into charters with such schools subject to approval by the state board as provided in subsection (d) of this Code section. A public charter school authorizer that approves a public charter school shall be responsible for the continuing oversight of such school or shall contract with another public charter school authorizer for such oversight. The oversight shall be sufficient to ensure that the public charter school authorizer can certify that the public charter school is in compliance with the charter and applicable law.

(2) If the state board finds that a public charter school authorizer is not engaging in appropriate continuing oversight of one or more public charter schools operating under a charter issued by the authorizer, the state board may suspend the power of the public charter school authorizer to issue new charters to organize and operate public charter schools. Any charter approved by the public charter school authorizer during any such suspension shall be void. A charter approved by the public charter school authorizer prior to the suspension shall not be affected by such suspension.

(b) Public charter school authorizers shall be accountable in the same manner as local boards of education for the compliance of public charter schools with the academic and performance requirements of such schools.

(c) The public charter school authorizer shall approve the charter of a charter petitioner for a public charter school if the authorizer finds that such petition meets the requirements set forth in this Code section, Code Section 20-2-2063, and the provisions of this title, and is in the public interest. Within ten days after approving a charter for a public charter school, the public charter school authorizer shall submit to the state board a copy of the petition and charter. If the public charter school authorizer denies a petition, it must within 60 days specifically state the reasons for the denial, list all deficiencies, and provide a written statement of the denial to the charter petitioner.

(d) The state board shall approve the charter of a charter petitioner for a public charter school if the petition has been approved by the public charter school authorizer and the state board finds that such petition meets the requirements set forth in this Code section. If the state board denies a petition, it must within 60 days specifically state the reasons for

1 the denial, list all deficiencies, and provide a written statement of the denial to the charter  
2 petitioner and the public charter school authorizer. This subsection shall not apply in the  
3 case where the state board is also the public charter school authorizer.

4 (e) A public charter school authorizer shall not charge a fee or require reimbursement of  
5 expenses for considering a charter petition, for approving a charter, or for providing  
6 oversight of a charter for a public charter school in an amount that exceeds a combined  
7 total of 3 percent of the total quality basic education formula earnings calculated pursuant  
8 to Code Section 20-2-161 and received by the public charter school in the school year in  
9 which the fees or expenses are charged. A public charter school authorizer may provide  
10 other services for a public charter school and charge a fee for such services, but shall not  
11 require such an arrangement as a condition to approving the charter authorizing the public  
12 charter school.

13 (f) A public charter school authorizer is not required to approve a charter to any person or  
14 entity. Charters for public charter schools shall be issued taking into consideration the  
15 resources available for the proposed public charter school, the population to be served by  
16 such proposed public charter school, and the educational goals to be achieved by such  
17 proposed public charter school.

18 (g) The charter shall establish the method of selection, length of term, and number of  
19 members of the board of directors of each public charter school that is issued a charter. A  
20 person appointed by a public charter school authorizer to serve as a public charter school  
21 board of director member shall be considered a public officer who, prior to taking public  
22 office, shall take the oath of public office in the same manner as required under Code  
23 Section 45-3-1.

24 (h) A charter approved by a public charter school authorizer to organize and administer a  
25 public charter school shall contain at least all of the following:

26 (1) The educational goals the public charter school is to achieve and the methods by  
27 which it will be held accountable;

28 (2) A description of the method to be used to monitor the public charter school's  
29 compliance with applicable law and its performance in meeting its targeted educational  
30 objectives;

31 (3) A description of the process for amending the charter during the term of the charter.  
32 A public charter school authorizer may issue a charter for up to ten years, but shall not  
33 issue a charter for less than five years;

34 (4) Procedures for terminating or revoking the charter and grounds for terminating or  
35 revoking the charter;

36 (5) A description of and address for the proposed physical plant in which the public  
37 charter school will be located;

1 (6) Requirements and procedures for financial audits. The financial audits shall be  
2 conducted at least annually by a certified public accountant in accordance with generally  
3 accepted governmental auditing principles; and

4 (7) A statement that a public charter school shall comply with all applicable law.

5 (i) No application for a public charter school may be made to a public charter school  
6 authorizer by a petitioner for a conversion charter school that has been denied by a local  
7 board.

8 (j) The state board shall have the authority to assert control over a public charter school  
9 to ensure that the school satisfies the performance requirements of its charter if the public  
10 charter school authorizer fails to properly oversee the school or enforce the requirements  
11 of the charter, as determined by the state board. Such intervention may include, but not be  
12 limited to:

13 (1) Removal of school personnel, including the principal and personnel whose  
14 performance has continued not to produce student achievement gains over a three-year  
15 period as a condition for maintaining charter status;

16 (2) Allowing for the conversion to a state chartered special school;

17 (3) Mandating the complete reconstitution of the school, removing all personnel,  
18 appointing a new principal, and hiring all new staff. Existing staff may reapply for  
19 employment at the newly reconstituted school but shall not be rehired if their  
20 performance regarding student achievement has been negative for the past three years;

21 (4) Mandating a monitor, master, or management team in the school that shall be paid  
22 by the school;

23 (5) Mandating a complete restructuring of the school's governance arrangement and  
24 internal organization of the school; and

25 (6) Any other restrictions or mandates, as deemed appropriate by the state board.

26 (k) A public charter school may take action to carry out its purposes, including, but not  
27 limited to, the following:

28 (1) To sue and be sued in its own name;

29 (2) To acquire, hold, and own in its own name real or personal property, or interests in  
30 real or personal property, for educational purposes by purchase, gift, grant, devise,  
31 bequest, lease, sublease, installment purchase agreement, land contract, option, or  
32 condemnation, and subject to mortgages, security interests, or other liens; and to sell or  
33 convey the property as the interests of the public charter school require;

34 (3) To receive and disburse funds for lawful purposes;

35 (4) To enter into binding legal agreements with persons or entities as necessary for the  
36 operation, management, and maintenance of the public charter school;

37 (5) To incur temporary debt; and

(6) To solicit and accept any grants or gifts for educational purposes and to establish or permit to be established on its behalf one or more nonprofit corporations the purpose of which is to assist the public charter school in the furtherance of its public purposes.

(l) A public charter school, with the approval of the public charter school authorizer, may employ or contract with an entity to provide personnel as necessary for the public charter school's operation, and to prescribe the duties and compensation of such personnel contracted with or employed pursuant to this subsection."

## SECTION 7.

Said chapter is further amended by revising Code Section 20-2-2065, relating to operating requirements, control, and management, as follows:

"20-2-2065.

(a) Except as provided in this article or in a charter, a charter school shall not be subject to the provisions of this title or any state or local rule, regulation, policy, or procedure relating to schools within an applicable school system regardless of whether such rule, regulation, policy, or procedure is established by the local board, the state board, or the Department of Education; provided, however, that the state board may establish rules, regulations, policies, or procedures consistent with this article relating to charter schools. In exchange for such a waiver, the charter school agrees to meet or exceed the performance based goals included in the charter and approved by the local board or public charter school authorizer, as applicable, including but not limited to raising student achievement.

(b) In determining whether to approve a charter petition or renew an existing charter, the local board and state board or the public charter school authorizer and state board, as applicable, shall ensure that a charter school shall be:

(1) A public, nonsectarian, nonreligious, nonprofit school that is not home based, provided that a charter school's nonprofit status shall not prevent the school from contracting for the services of a for profit entity and that nothing in this Code section shall preclude the use of computer and Internet based instruction for students in a virtual or remote setting;

(2) Subject to the control and management of the local board of the local school system in which the charter school is located, as provided in the charter and in a manner consistent with the Constitution, if a local charter school;

(3) Subject to the supervision of the state board, as provided in the charter and in a manner consistent with the Constitution, if a state chartered special school;

(4) Subject to the supervision of the public charter school authorizer, if authorized by such authorizer, as provided in the charter and in a manner consistent with the Constitution;

~~(4)~~(5) Organized and operated as a nonprofit corporation under the laws of this state; provided, however, that this paragraph shall not apply to any charter petitioner that is a local school or state or local public entity;

~~(5)~~(6) Subject to all federal, state, and local rules, regulations, court orders, and statutes relating to civil rights; insurance; the protection of the physical health and safety of school students, employees, and visitors; conflicting interest transactions; and the prevention of unlawful conduct;

~~(6)~~(7) Subject to all laws relating to unlawful conduct in or near a public school;

~~(7)~~(8) Subject to an annual financial audit conducted by the state auditor or, if specified in the charter, by an independent certified public accountant licensed in this state;

~~(8)~~(9) Subject to the provisions of Part 3 of Article 2 of Chapter 14 of this title, and such provisions shall apply with respect to charter schools whose charters are granted or renewed on or after July 1, 2000;

~~(9)~~(10) Subject to all reporting requirements of Code Section 20-2-160, subsection (e) of Code Section 20-2-161, Code Section 20-2-320, and Code Section 20-2-740;

~~(10)~~(11) Subject to the requirement that it shall not charge tuition or fees to its students except as may be authorized for local boards by Code Section 20-2-133; and

~~(11)~~(12) Subject to the provisions of Code Section 20-2-1050 requiring a brief period of quiet reflection."

## SECTION 8.

Said chapter is further amended in Code Section 20-2-2066, relating to admission, enrollment, and withdrawal of students, by adding a new subsection to read as follows:

"(e)(1) A public charter school shall not charge tuition and shall not discriminate in its student admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a disabled person, or any other basis which would be illegal if done by a local school system. However, a public charter school may limit admission to students who are within a particular age range or grade level or on any other basis that would be legal if done by a local school system.

(2) Except for a foreign exchange student who is not a United States citizen, a public charter school shall not enroll a child who is not a resident of this state. Enrollment in the public charter school may be open to all individuals who reside in this state who meet the admission policy of the public charter school. For a public charter school, enrollment shall be open to all children who reside in this state who meet the admission policy of the public charter school. If there are more applications to enroll in the public charter school than there are spaces available, students shall be selected to attend using a random selection process. However, a public charter school may give enrollment priority to a

sibling of a child enrolled in the public charter school, or children of a full-time staff member. A public charter school shall allow any child who was enrolled in the public charter school in the immediately preceding school year to enroll in the public charter school in the appropriate grade unless the appropriate grade is not offered at that public charter school.

(3) A public charter school may include any grade up to grade 12 or any configuration of those grades, including kindergarten and early childhood education, as specified in its charter contract. If specified in its charter, a public charter school may also operate an adult basic education program, adult high school completion program, or general educational development testing preparation program. The authorizer may approve an amendment of a charter with respect to any provision in the charter, including the ages of children to be enrolled or the grades offered by the public charter school."

### SECTION 9.

Said chapter is further amended by revising Code Section 20-2-2067.1, relating to amendment of terms of charter for charter school, initial term of charter, and annual report, as follows:

"20-2-2067.1.

(a) The terms of a charter for a local charter school may be amended during the term of the charter upon the approval of the local board, the state board, and the charter school. The terms of a charter for a state chartered special school may be amended during the term of the charter upon the approval of the state board and the charter school. The terms of a charter for a public charter school may be amended during the term of the charter upon the approval of the public charter school authorizer, the state board, and such charter school.

(b) The initial term of a charter shall be for a minimum of five years, unless the petitioner shall request a shorter period of time, and shall not exceed ten years. The local board and the state board, in accordance with Code Section 20-2-2064.1, may renew a local charter, upon the request of the charter school, for the period of time specified in the request, not to exceed ten years. The state board may renew a state chartered special school, upon the request of the school, for the period of time specified in the request, not to exceed ten years. The public charter school authorizer and the state board, in accordance with Code Section 20-2-2063.1, may renew a public charter school, upon the request of the school, for the period of time specified in the request, not to exceed ten years.

(c) A charter school shall submit an annual report outlining the previous year's progress to the authorizing local board, ~~or~~ state board, or public charter school authorizer, as appropriate; to parents and guardians of students enrolled in the school; and to the

Department of Education no later than October 1 of each year. The report shall contain, but is not limited to:

- (1) An indication of progress toward the goals as included in the charter;
- (2) Academic data for the previous year, including state academic accountability data, such as standardized test scores and adequate yearly progress data;
- (3) Unaudited financial statements for the fiscal year ending on June 30, provided that audited statements will be forwarded to the local board and state board, or for public charter schools, to the public charter school authorizer and the state board, upon completion;
- (4) Updated contact information for the school and the administrator;
- (5) Proof of current nonprofit status, if applicable; and
- (6) Any other supplemental information that the charter school chooses to include or that the public charter school authorizer or the state board requests that demonstrates its success."

#### SECTION 10.

Said chapter is further amended by revising Code Section 20-2-2068, relating to charter terminations, as follows:

"20-2-2068.

The state board may terminate a charter under the following circumstances:

(1)(A) If a majority of the parents or guardians of students enrolled at the charter school vote by a majority vote to request the termination of its charter at a public meeting called with two weeks' advance notice and for the purpose of deciding whether to request the state board to declare the charter null and void; or

(B) If a majority of the faculty and instructional staff employed at the charter school vote by a majority vote to request the termination of its charter at a public meeting called with two weeks' advance notice and for the purpose of deciding whether to request the state board to declare the charter null and void;

(2) If, after providing reasonable notice to the charter school and an opportunity for a hearing, the state board finds:

(A) A failure to comply with any recommendation or direction of the state board with respect to Code Section 20-14-41;

(B) A failure to adhere to any material term of the charter, including but not limited to the performance goals set forth in the charter;

(C) A failure to meet generally accepted standards of fiscal management;

(D) A violation of applicable federal, state, or local laws or court orders;

(E) The existence of competent substantial evidence that the continued operation of the charter school would be contrary to the best interests of the students or the community; or

(F) A failure to comply with any provision of Code Section 20-2-2065; or

(3) Upon the written request of a local board or a public charter school authorizer for termination of a charter ~~for a local charter school located within its school system~~ if, prior to making such request, the local board or public charter school authorizer provided reasonable notice to the charter school and an opportunity for a hearing, and determined the existence of any of the grounds described in paragraph (2) of this Code section."

#### SECTION 11.

Said chapter is further amended in Code Section 20-2-2068.1, relating to application of the Quality Basic Education Formula, grants, local tax revenue, and funds from local bonds, by adding a new subsection to read as follows:

"(h)(1) For purposes of this subsection, the term:

(A) 'Local funding portion' means the amount of local funds from local property taxes and any other local source which would have been earned or levied on behalf of the student in the same manner as would have been earned and received by the local school system in which such student resides if he or she remained in the local school system.

(B) 'State funding portion' means QBE formula earnings, applicable QBE grants, applicable nonQBE state grants, and applicable federal grants.

(C) 'Total charter funding' means the state funding portion plus an amount equivalent to 90 percent of the local funding portion.

(2) A public charter school shall receive total charter funding for each student in its school. The state board shall calculate the amount for each student and shall deduct the total amount from the student's resident local school system's allotment.

(3) The authorizer for a public charter school shall be the fiscal agent for the public charter school. The total charter funding shall be paid to the public charter school authorizer that is the fiscal agent for that public charter school, which shall then forward the payment to the public charter school. The local board shall not be responsible for the fiscal management, accounting, or oversight of the public charter school. The public charter school shall report enrolled students in a manner consistent with Code Section 20-2-160. Any data required to be reported by the public charter school shall be submitted directly by the school to the appropriate state agency. Where feasible, the state board shall treat a public charter school no less favorably than other public schools within the state with respect to the provision of funds for transportation and building programs."

**SECTION 12.**

Said chapter is further amended in Code Section 20-2-2068.2, relating to facilities fund for charter schools, purposes for which funds may be used, upkeep of charter school property, and receipt of surplus from board of education, by revising subsections (a) and (h) as follows:

"(a) From moneys specifically appropriated for such purpose, the state board shall create a facilities fund for local charter schools, ~~and~~ state chartered special schools, and public charter schools for the purpose of establishing a per pupil, need based facilities aid program."

"(h) Each local board of education that has designated any facility or property as surplus, intended for disposal, or otherwise unused shall make such facility or property available for lease or purchase by a local charter school or a public charter school on the same basis as it makes such facility or property available to other public schools under the control and management of the local board of education. A conversion charter school or public charter school may not be charged a rental or leasing fee for the existing facility or for property normally used by the public school which became the conversion charter school. A local charter school or a public charter school that receives property from a local board may not sell or dispose of such property without the written permission of the local board."

**SECTION 13.**

Said chapter is further amended by revising Code Section 20-2-2069, relating to the Office of Charter School Compliance, as follows:

"20-2-2069.

There is established within the Department of Education an Office of Charter School Compliance, the responsibilities of which shall be to:

(1) Prepare charter school guidelines to be approved by the state board;

(2) Distribute charter school petition information to inquiring parties;

(3) Process all charter school petitions for consideration by the state board;

(4) Advise public charter school petitioners and public charter schools as to state board requirements;

~~(4)~~(5) Administer any state or federal charter school implementation grant program;

~~(5)~~(6) Contract with an independent party to evaluate the performance of charter schools, as such performance relates to fulfilling the terms of their charters; and

~~(6)~~(7) Compile information necessary to produce the annual report required by Code Section 20-2-2070."

**SECTION 14.**

All laws and parts of laws in conflict with this Act are repealed.